

THE CONNECTICUT LIGHT AND POWER COMPANY and
YANKEE GAS SERVICES COMPANY

FEBRUARY 18, 2009

The Connecticut Light and Power Company and Yankee Gas Services Company submit comments on **Proposed House Bill 5264 – Protecting Municipally Acquired Open Space.**

CL&P has been part of everyday life in Connecticut for more than 100 years, providing safe and reliable electric service to homes, neighborhoods and businesses. With 1.2 million customers in 149 cities and towns, and 1,900 employees, CL&P is an active member in the communities it serves, including the largest taxpayer in many, offering programs in energy efficiency, economic development and environmental stewardship. Yankee Gas is Connecticut's largest natural gas distribution company, with over 400 employees delivering safe, reliable natural gas service to approximately 205,000 customers in 71 cities and towns. Yankee Gas is expanding Connecticut's energy options and increasing customer choice by extending the availability of clean, efficient natural gas throughout the state. Our service company adds another 2,000 employees, most of whom are located in Connecticut.

The Connecticut Light and Power Company expresses concern regarding the impact PHB 5264 could have on its ability to meet its responsibilities to provide a reliable electric system in the Connecticut. Existing Rights of Way (ROWs) for major state infrastructure, including highways and electric transmission and distribution lines, are precious resources, and it is in the state's interests to be sure that future improvements on these ROWs or expansions remain possible.

Absent such potential, the state's future needs would require the development of new ROWs, with expected higher project costs and impacts associated with major change. Where an existing transmission line ROW traverses undeveloped land which a municipality subsequently acquires for open space, the state's interests will be harmed if the municipality can then, willingly or not, prevent transmission line upgrades on the ROW, or on small expansions of the ROW. The exclusive jurisdiction over transmission line siting that is vested in the CT Siting Council by the state would be weakened by a municipality's ability to acquire open space land, which encompasses or abuts a section of existing ROW, and then to block its use or reasonable expansion for meeting future electric transmission and distribution system needs.

A case in point on a recent transmission line project occurred in the Town of Redding. The Town owns the Saugatuck Falls Natural Area ("SFNA"), a large land area that it acquired via a Connecticut open space land grant. A long-existing transmission line right-of-way passes over this land. Under terms of the grant, the Town of Redding cannot permit non-recreational uses or development on any part of the property without the approval of the Connecticut Department of Environmental Protection ("DEP"). The Bethel to Norwalk transmission project required a small expansion (and clearing) of this ROW over a distance of approximately 0.8 miles in the SFNA, so that a 345-kV line could be added. Had CL&P been precluded from working out arrangements with the Town and the DEP, CL&P would have been forced to find, acquire and develop an alternate ROW around this large area. Under the common law "prior use doctrine",

land devoted to a public use cannot be acquired by eminent domain for purposes of an inconsistent public use.

A similar open-space land protection issue arose on the same project in the Town of Bethel where a long-existing transmission line ROW crossed the large Bethel Educational Park. Some areas within the park had been acquired with state grants, subject to a Dedication Agreement requiring that the park property should not be "conveyed or converted to any use other than recreation or conservation purposes...except with the approval of the State Council on Agriculture and Natural Resources..." [now the DEP]. Here CL&P considered both a widening of its existing ROW to build the 345-kV line and new easement rights to build an underground 345-kV line section. Per terms of the grant, the Town and the DEP would have to agree to the granting of any new easements over the protected land. Under the common law "prior use doctrine", land devoted to a public use cannot be acquired by eminent domain for purposes of an inconsistent public use. CL&P successfully worked with the Town and the DEP to acquire new easement rights for the section of new line passing through the park. Had CL&P been precluded from working out arrangements with the Town and the DEP, CL&P would have been forced to find, acquire and develop an alternate ROW around this large area.

CL&P recommends that the following section be added to the proposed legislation:

AN ACT PROTECTING MUNICIPALLY ACQUIRED OPEN SPACE LAND.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

That the general statutes be amended to provide that for all real property acquired by a municipality with the express purpose of open space land protection, a permanent conservation easement, as defined in section 47-42 of the general statutes, shall be executed for any such

property purchased with bond funds, which conservation easement shall provide that the property shall remain forever predominantly in its natural and open condition for the specific conservation or open space purposes for which it was acquired, provided any improvements or changes to the property shall be supportive of such condition or purposes. The permanent conservation easement shall be in favor of the municipality. Such permanent conservation easement shall also include a requirement that the property be made available to the general public for appropriate recreational purposes. An exception to the provision of public recreational access may be made at the discretion of the municipality when provision for public access would be unreasonably detrimental to the wildlife or plant habitat or other natural features of the property or, for land where development rights have been purchased, would be disruptive of agricultural activity occurring on the land.

It is further proposed that land, easements or permanent interests in land acquired by municipalities for open space, conservation or recreation purposes subject to voter referendum shall not be reduced or used for other purposes and shall forever remain to the uses to which they were purchased or acquired according to the true intent and meaning of the referendum vote; and further that evidence of such purposes and such vote shall appear of record in the deeds and in the chain of title on the land records to such lands, easements or permanent interests in land.

No provision herein shall preclude the expansion of an existing easement of right-of-way held by a public service company, for the purpose of constructing or modifying facilities permitted by the Connecticut Siting Council or the Department of Public Utility Control.

If there are further questions please contact:

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